IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.51 OF 2005

M/s. Sevak Offset & Ors. ...Petitioners.

V/s

The State of Maharashtra
& Anr. ...Respondents.

Ms. Manorama Mohanty i/b S.K. Srivastav
and Co. for the petitioners.
Mr. H.H. Chande for respondent No.2
Mr. A.S. Shitole for the State.

CORAM: V.M.KANADE,J.

DATE : 7TH APRIL, 2005

P.C.:

1. Heard the learned Counsel for the petitioners and the learned Counsel for respondent No.2.

2. By this Petition petitioners seek to challenge the order of issuance of process passed by the Additional Chief Metropolitan Magistrate, 33rd Court, Ballard Estate Mumbai 400001 on a complaint filed by respondent No.2.

3. It is contended by the learned Counsel for the petitioners that four cheques were given to respondent No.2 only at the request and representation of the Directors of the complainant to show these cheques to their Bankers for the accommodation of the

loan. It is submitted that the cheques were issued in good faith relying upon assurances and representations made by the Directors of respondent No.2 that they would send modified bills after deducting the amounts for substandard goods which were supplied by respondent No.2. It is submitted that the petitioners had issued instructions to their bank to stop the payment of the cheque. It is, therefore, submitted that there is a bonafide dispute regarding payment to be made by the petitioners to respondent No.2.

4. It is not possible to accept the submissions made by the learned Counsel for the petitioners. The question whether there was existing debt or liability can be considered only after the evidence is led by both the parties. In any case, presumption is raised under section 139 against the drawer of a cheque who has to rebut the presumption by leading evidence or by asking the questions in the cross-examination or in such other manner as he deems fit and proper. There is no reason to interfere with the order of issuance of process passed by the Magistrate. All questions raised in this petition are kept open. Trial Court shall decide all these questions raised after the evidence is adduced by both the parties on merits and in accordance with law. Trial Court is directed to

decide the Criminal Case as expeditiously as possible and, in any case, within a period of six months.

V.M. KANADE, J.